

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SHIRDENIA BRYANT, et al.	:	Civil Action No. C-1-02-006
Plaintiffs	:	(Judge Spiegel)
vs.	:	
PRESCOTT BIGELOW, IV, et al.	:	<u>DEFENDANTS MOTION IN</u>
Defendants	:	<u>LIMINE RE:PRIOR VIDEO</u>
	:	<u>TESTIMONY</u>

* * * * *

Come now the Defendants, by and through counsel, and move the Court for an Order in Limine relative to any testimony taken via a videotaped deposition of Defendant Bigelow in August, 2003.

Defendants reasonably anticipate that the Plaintiff will seek to introduce testimony taken from Defendant Bigelow during a videotaped discovery deposition taken in this matter in August, 2003. Defendants' object to the use of any testimony from that deposition unless the testimony comports with Federal Rule of Civil Procedure 32. Defendants' counsel has received from Plaintiff's counsel a "designation" of page line videotaped discovery deposition testimony Plaintiff intends to introduce in Plaintiff's case in chief..

Defendants respectfully submit that the prior discovery deposition testimony is not admissible unless and until one of the exceptions referenced in F.R.C.P. 32 is met, i.e, the testimony is used to impeach or contradict the witness, or the witness is unavailable to testify as set forth under the rule. Obviously, testimony can only be used to impeach or contradict a witness

or a party where there is prior inconsistent testimony from the testimony adduced at trial. To date, there has been no inconsistent testimony adduced at trial and, therefore, Plaintiff's anticipated attempted use of the prior videotaped discovery deposition in Plaintiff's case does not meet any exception to F.R.C.P 32 and should, therefore, be stricken *in limine* until and unless such requirements are met.

Respectfully Submitted,

Gary R. Lewis Co., L.P.A.

/s/ Gary R. Lewis
GARY R. LEWIS, #0017697
Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian
Cincinnati Club Building, Suite 915
30 Garfield Place
Cincinnati, Ohio 45202
(513) 665-9222/(513) 721-7008 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on February 9th, 2004, I electronically filed the foregoing Defendants Motion In Limine Re: Prior Video Testimony using the CM/ECF system and I hereby certify that the foregoing was also served upon William H. Blessing, Esq. Attorney for Plaintiffs, 119 East Court Street, Suite 500, Cincinnati, Ohio 45202 by regular U.S. Mail, postage pre-paid this 9th day of February, 2004.

/s/ Gary R. Lewis
Gary R. Lewis
Attorney for Defendant Prescott Bigelow and
Defendant Roseanne Christian

